

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

76-7299

To be argued by
JOSEPH ARTHUR COHEN

United States Court of Appeals

FOR THE SECOND CIRCUIT

MISS MAE M. SMITH,

Plaintiff-Appellant,

—against—

FRED BARONS, F.B.I. Agent; et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF OF DEFENDANT-APPELLEE, STOUFFERS RESTAURANT CORP.

ALEXANDER, ASH, SCHWARTZ & COHEN
Attorneys for Defendant-Appellee,
Stouffers Restaurant Corp.

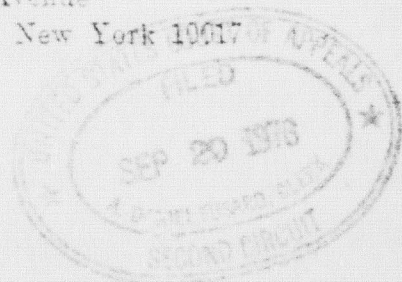
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889-0410

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Of Counsel



United States Court of Appeals

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—against—

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In dismissing the amended complaint of plaintiff-appellant, who appears pro se, the Court below stated:

“Defendants have moved to dismiss this pro se complaint on various grounds.

Although plaintiff failed to submit papers in opposition, this court nevertheless afforded her the opportunity to make oral argument in opposition to defendants’ motions to dismiss. The statements made by plaintiff, however, shed no greater light on her claims than the confusing and incredible allegations made in her complaint.

Defendants contend that the court lacks jurisdiction or in the alternative that the complaint violates Fed.

R. Civ. P. 8(e)(1). Section 8(e)(1) states that each averment of a pleading shall be simple, concise and direct.

Plaintiff's statements to the court indicate that she speculates as to attitudes towards her and that she draws conclusions that many people have exerted efforts to destroy her welfare, both physically and socially. The papers submitted by her and statements made by her bolster the court's impression that the fears asserted and the accusations made by plaintiff are personal suspicion and have no basis in fact. The many defendants should not be subjected to the expense of defending allegations which violate Rule 8(e)(1).

The government's motion for summary judgment pursuant to 28 U.S.C. §2680(h) has merit and is granted. The court likewise grants the motion of each defendant dismissing the complaint since it violates Rule 8(e)(1). In view of the fact that plaintiff already has been granted opportunity to amend her complaint, the case is now dismissed with prejudice as to all defendants. The Clerk is directed to enter judgment in accordance with this opinion."

Rule 8(e)(1) of the Federal Rules of Civil Procedure requires that:

"Each averment of a pleading shall be simple, concise and direct. * * *"

The pleadings filed by the appellant contain anything but simple, concise and direct averments. Examination of the appellant's pleadings conclusively establishes the soundness of the decision of the Court below.

Although its decision under Rule 8(e)(1) of the Federal Rules of Civil Procedure made it unnecessary for the Court

below to consider the other grounds presented for dismissal of the amended complaint, it should nonetheless be pointed out that the amended pleadings do not establish jurisdiction over the subject matter of this so-called action.

Accordingly, it is respectfully submitted that the judgment of the Court below dismissing the amended complaint herein should be affirmed.

Respectfully submitted,

ALEXANDER, ASH, SCHWARTZ & COHEN
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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ALBERT CLARK, being duly sworn, deposes and says:

That he is over eighteen years of age and is not a party to the within action. That on the day of September, 1976, he served ^{two(2)} true copies of the annexed

BRIEF OF DEFENDANT-APPELLEE, STOUFFERS RESTAURANT CORP.

on

MISS MAE M. SMITH,
Appellant pro se
c/o Coleman Family
83-06 Vietor Avenue
Elmhurst, New York 11373

herein, by depositing a true copy of the aforesaid properly enclosed in a securely sealed and postpaid wrapper in a Post Office box under the exclusive care and custody of the Government of the United States, at 801 Second Avenue, in the Borough of Manhattan, City and State of New York, addressed to the aforesaid as above stated, and that said address(es) was (were) the address(es) designated by the said attorney(s) as the address(es) within the State of New York, where papers in this action might be served.

Albert Clark

Sworn to before me this
day of September, 1976.

Notary Public